IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2916 OF 2006.

Kamalakar Ramasa Chaware .... PETITIONER.

....Versus....

1. Salim s/o Abdul Karim
   & others. .... RESPONDENTS.

Mr. A.M. Deshmukh, learned Counsel for petitioner.
Respondent nos. 1,2 & 4 to 7 served.

CORAM: R.V. MORE, J.

DATED : NOVEMBER 22, 2007.

Heard Mr. A.M. Deshmukh, learned Counsel for petitioner.

2. This Writ Petition was placed for orders on 24.11.2006 and after hearing the learned Counsel for the petitioner, notice before admission was issued which was made returnable after two weeks. By this notice, respondents were put on the notice that the petition would be finally heard and disposed of at the stage of admission itself. Petition against respondent no.3 is already dismissed for non-removal of office objections. However, cause of action survives. None appears for the respondent nos. 1,2 & 4 to 7 though served.

3. The petitioner by filing this petition under Article 227 of the Constitution of India challenges legality, validity and propriety of the order impugned dated 15.12.2005 passed by the Joint Civil Judge, J.D. at Karanja below application (Exh.79) in Regular Civil Suit No. 37/02 whereby the petitioner's abovesaid application to bring the legal representatives of deceased plaintiff on record came to be rejected. Brief facts for the disposal of the present petition are as follows :-

4. One Ramsa Padamsa Chaware filed Regular Civil Suit No. 37/02 against respondents for possession of the suit premises under Section 16(1)(i) of the Maharashtra Rent Control Act, 1999. During the pendency of the aforesaid petition, the sole plaintiff Ramasa Chaware died on 8.8.2005. However, he executed a Will dated 30.8.2004 bequeathing the suit property in favour of the present petitioner. In the facts and circumstances mentioned above, the present petitioner filed application at Exh.79 under Order XXII of the Civil Procedure Code to bring his name as legal representative of deceased plaintiff on record.

5. This application came to be opposed by the respondent on the ground that the petitioner is not the only legal representative of deceased Ramasa. It was also contended that the petitioner has to

prove strictly genuineness of the Will-deed by way of probate. It is the case of the respondent that unless and until probate is granted by the Competent Court, the Will-deed cannot be enforced.

6. The learned trial Judge, namely, Joint Civil Judge, Junior Division, at Karanja who heard and disposed of this application by the order impugned in the petition was pleased to reject the application on the ground that right of legatee can be established by way of probate of the Will and, therefore, in the absence of probate petitioner cannot claim to be legal representative of deceased Ramasa.

7. Having heard Mr. Deshmukh, the learned Counsel for the petitioner, and having gone through the impugned order, I am of the considered view that the petition deserves to be allowed by quashing and setting aside the order impugned in the petition.

8. There is no dispute that the subject matter of the Regular Civil Suit No. 37/02 is situated at Karanja-Lad in Washim district, i.e. outside Bombay. The petitioner's application was rejected by the trial Court only on the sole ground that under the provisions of Section 213(1) of the Indian Succession Act, 1925, the rights of the legatee can be established by way of probate of the Will. The question whether the provisions of Section 213 of the Indian

Succession Act, 1925 are applicable to the property situated outside Bombay or probate is required to be obtained in respect of the property situated outside Bombay is no more *res integra.* The learned Single Judge observed in the case of **Shri Bhagwanji Karsanbhai Rathod .vs. Shri Surajmal Anandraj Mehta reported in 2003(4) ALL MR 85** in para no.8 as follows :-

> "8. On conjoint reading of the above provisions, it would appear that only Wills specified in Clause (a) and (b) of section 57 of the Act would require the executor or legatee to obtain probate/letters of Administration from the court of competent jurisdiction so as to pursue the right arising under the Will to its logical end. This legal position is reinforced from the exposition of our High Court in **Ahmed's case** (supra) as well as **Jyoti's case** (supra). Therefore, the first question that needs to be considered is : whether the subject Will is covered by Section 57, clause (a) and (b) of the Act ? As mentioned earlier, it is not in dispute that the suit property is situated at Pune and the Will was also executed in Pune. If that is so, it is not possible to countenance the submission that Section 57(a) and (b) of the Act would

apply. Understood thus, it was not necessary for the Petitioner to obtain probate so as to proceed with the execution proceedings."

In the present case also, the suit property is situated in Washim district, i.e. outside Bombay and, therefore, provisions of Section 57 (a) & (b) are not applicable.

9. Similar question fell for consideration before learned Single Judge in the case of **Prabhakar s/o Chinappa Chavan .vs. State of Maharashtra reported in 2004(4) Mh.L.J. 886.** The learned Single Judge after considering the provisions of Sections 57 & 213 in paras 13 & 14 observed as follows :-

"13. ..... Therefore, the Will of the nature with which we are concerned would be governed by clause (c) of section 57. Now referring back to section 213, it will be clear that the general rule, wherein it has been made necessary to obtain a probate or letter of administration for raising a right as executor or legatee, by virtue of sub-section (2) has been made applicable to wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are referable to clauses specified in clauses (a) and (b) of section 57. It is, therefore, clear that the Wills of the

nature covered by sub-clause (c) of section 57 are not covered by the general rule under section 213, which requires a probate or letter of administration to enable a person to raise a claim to a right as an executor or legatee. The Legislature by exclusion has not made the provisions of section 213 applicable to the Wills covered under the provisions of sub-clause (c) of section 57."

"14. I am, therefore, in respectful agreement with the view taken by this Court in the aforesaid case of *Jyoti*, cited supra, wherein it has been held that for the Wills which are covered under sub-clause (c) of section 57, it is not necessary to obtain a probate or letter of administration, so as to establish right as an executor or legatee."

10. In yet another judgment reported in the case of **Mukesh Ramchandra Bhardwaj .vs. Smt. Usha Vasantrao Kathale reported in 2005(4) ALL MR 266** the learned Single Judge in para 8 observed as follows :-

"8. In the instant case, as the Will, dated 25th August, 1992, executed by Original Plaintiff – Umabai is in respect of the movable property, i.e. the Bank deposits lying in the

Bank at Bhandara, which is not within the territories mentioned in Clause (a) of Section 57 of the Act and, therefore, Clause (a) of Section 57 is not attracted. Similarly, in the case in hand, though the property is situated outside the territories mentioned in Clause (a) of Section 57 of the Act, however, the property under the Will not being the immovable property, the provision of Clause (b) of Section 57 is also not attracted. In the instant case, the Will dated 25th August, 1992, executed by Umabai being a Hindu and is admittedly executed after first day of January, 1927 and since the provisions of Clauses (a) and (b) are not applicable to the Will in question and, therefore, as per the scheme of Sub-clause (i) of Sub-section (2) of Section 213 of the Act, Sub-Section (1) of section 213 is not at all attracted and, therefore, it is not necessary for the non-applicant to obtain a probate of the Will in order to establish her right as legatee for submitting an application under Order 22 of the Civil Procedure Code. I concur with the view expressed by the Court in the case of **Jyoti Jagdish Singhai** (cited supra)."

11. The facts of the present case and facts of the judgments cited

above are similar inasmuch as in all the matters, the property is situated outside Bombay and, therefore, there is no applicability of Section 57(a) & (b) read with Section 213 of the Indian Succession Act and, therefore, probate is not required to be obtained so as to pursue the rights arising under the Will.

12. In view of the discussion made above, the learned trial Judge committed error in rejecting petitioner's application for bringing his name on record as legal representative of deceased Ramasa. The order impugned, therefore, is quashed and set aside. The petitioner's application at Exh.79 is allowed. The Writ Petition is disposed of in aforesaid terms with no order as to costs.

JUDGE.

J. *****